

AMENDED IN SENATE AUGUST 17, 2010
AMENDED IN SENATE AUGUST 2, 2010
AMENDED IN SENATE MAY 20, 2010
AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 633

Introduced by Assembly Member Ammiano

February 25, 2009

An act to amend Section 2636 of the Penal Code, relating to the Department of Corrections and Rehabilitation.

LEGISLATIVE COUNSEL'S DIGEST

AB 633, as amended, Ammiano. Department of Corrections and Rehabilitation: inmates and wards: classification.

Existing law requires the Department of Corrections and Rehabilitation to classify inmates and wards in order to prevent inmate and ward sexual violence and to promote inmate and ward safety, as specified. Existing law also requires the department to consider specified risk factors when classifying and housing inmates.

This bill would instead require the department to classify inmates and wards in order to prevent violence and would revise the risk factors, as specified, for assessing inmates or wards for risk of victimization or risk of being abusive, providing different factors based on whether the inmate or ward is being assessed for risk of victimization or of abusive behavior, and based on whether the inmate or ward is in a facility for male or female inmates. The bill would also provide directions to the department related to those risk factors and the placement of inmates

and wards. The bill would prohibit the department from requiring an inmate or ward to disclose or report his or her sexual orientation or gender identity and from disciplining or punishing an inmate or ward for failing to disclose or report his or her sexual orientation or gender identity, as provided.

The bill would prohibit the above provisions from being construed to require or justify expansion or construction of department facilities.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that the
2 National Prison Rape Elimination Commission has reported that
3 inmates and wards of correctional facilities are at a heightened
4 risk of sexual violence and abuse based on certain risk factors,
5 including having a mental or physical disability, being young,
6 having a slight physical build, having a sexual orientation other
7 than heterosexual, being gender nonconforming, for example,
8 having transgender identity or an intersex condition, not having
9 served a prior term of commitment, having a nonviolent history,
10 having a history of sexual victimization, or having a prior
11 conviction for a sexual offense.

12 (b) It is the intent of the Legislature in enacting this act to ensure
13 that the Department of Corrections and Rehabilitation recognizes
14 that wards or inmates may be at increased risk based on these
15 factors, and provides vulnerable inmates or wards who are at risk
16 with heightened protection in classification and housing decisions,
17 without automatically subjecting them to highly restrictive or
18 isolated settings or denying them access to programs and services.

19 SEC. 2. Section 2636 of the Penal Code is amended to read:

20 2636. For the purposes of this section, all references to
21 classification of wards shall take effect upon the adoption of a
22 classification system for wards developed by the Department of
23 Corrections and Rehabilitation in compliance with *Farrell v. Allen*,
24 Alameda County Superior Court Case No. RG 03079344.

25 The following practices shall be instituted to prevent violence
26 and promote inmate and ward safety in the department:

27 (a) The department's inmate classification and housing
28 assignment procedures shall take into account risk factors that can

1 lead to inmates and wards becoming the target of victimization or
2 of being abusive toward others. Relevant considerations include:

3 (1) For assessing inmates or wards in men's or boys' facilities
4 or units for risk of victimization: mental or physical disability,
5 mental illness, young age, slight physical build, first incarceration
6 in prison, nonviolent offense history, prior convictions for sex
7 offenses, prior victimization, and the inmate's or ward's stated
8 safety concerns and stated sexual orientation and gender
9 nonconformance.

10 (2) For assessing inmates or wards in men's or boys' facilities
11 or units for risk of being abusive: prior acts of abuse and prior
12 convictions for violent offenses.

13 (3) For assessing inmates or wards in women's or girls' facilities
14 or units for risk of victimization: mental or physical disability,
15 mental illness, prior victimization, and the inmate's or ward's
16 stated safety concerns.

17 (4) For assessing inmates or wards in women's or girls' facilities
18 or units for risk of being abusive: prior acts of abuse.

19 (b) The department shall ensure that staff members intervene
20 when an inmate or ward appears to be the target of harassment or
21 intimidation.

22 (c) The department shall not require any inmate or ward to
23 disclose or report his or her sexual orientation or gender identity
24 at any time, and a disclosure or report shall not be discredited
25 solely because it was not provided at an earlier point in time.

26 (d) The department is prohibited from disciplining or otherwise
27 punishing an inmate or ward if the inmate or ward fails to disclose
28 or report his or her sexual orientation or gender identity during all
29 or part of his or her term of commitment.

30 (e) In accordance with the department's classification scoring
31 system, the risk factors listed in subdivision (a) shall be considered
32 with the goal of keeping separate those inmates and wards at high
33 risk of being victimized from those at high risk of being abusive.
34 ~~Inmates and wards at high risk for victimization may be placed in~~
35 ~~segregated housing only as a last resort and then only until an~~
36 ~~alternative means of separation from likely abusers can be arranged.~~
37 ~~The department shall make reasonable efforts to ensure that risk~~
38 ~~of victimization based on the risk factors listed in subdivision (a)~~
39 ~~does not limit access to classification, housing, programs,~~
40 ~~education, and work opportunities, unless it is clinically indicated.~~

1 ~~Lesbian, gay, bisexual, transgender, or other gender-nonconforming~~
2 ~~inmates or wards shall not be placed in particular facilities, units,~~
3 ~~or wings solely on the basis of sexual orientation, genital status,~~
4 ~~or gender identity.~~

5 (f) Nothing in this section shall be construed to require or justify
6 expansion or construction of department facilities.

O